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No. 71-1292

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In the Supreme Court of the United States

OCTOBER TERM, 1971

PETITION NOT PRINTED

ROBERT L. ALEXANDER, PETITIONER

v.

ELLIOT L. RICHARDSON, SECRETARY OF HEALTH, EDUCATION AND WELFARE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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1. Petitioner was injured in an automobile accident in February 1966 and as a result had an impairment which lasted for over a year, but the impairment was of disabling severity for less than a year—petitioner stopped work on December 22, 1967, and returned to his job on December 2, 1968. He applied for disability benefits for the period during which he was unable to work. The Social Security

Act, 42 U.S.C. 423(d), defines disability as "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months * * *." The Secretary denied benefits on the ground that, since Alexander had not been unable to work for a full twelve month period, he had not been disabled within the meaning of the Social Security Act.

2. Petitioner sought review in the district court, which granted the Secretary's motion for summary judgment, adopting the Secretary's construction of the definition of disability—that the claimant must be both impaired and unable to work by reason thereof for the full twelve month period specified in the Act. The Court of Appeals for the Tenth Circuit unanimously affirmed. It held that the "purpose of the statute and its legislative history disclose the fallacy" of claimant's argument that only the impairment need last for twelve months and not the inability to work (451 F. 2d at 1186).

3. As both the district court and the court of appeals held, the Secretary's construction of the definition of disability is reasonable and comports with the purpose of the Social Security Act and its legislative history. Petitioner relies on an overly technical parsing of the statute that does not comport with common sense, since it would allow disability benefits in cases where the inability to work is of relatively short duration, whereas the clear statutory in-

tent is to require the inability to work to continue for longer than twelve months, as demonstrated by the excerpts from the Senate report quoted in the decision of the court of appeals (451 F. 2d at 1186-1187).

4. This is the only case involving this issue to reach a court of appeals in the seven years since this definition was adopted and only the third case involving this issue to come before any court in that time. In the absence of a conflict between circuits, review by this Court is not warranted.

It is, therefore, respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

MAY 1972.

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